

JAMES D. CREIGHTON

IBLA 84-871      Decided May 28, 1985

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, increasing annual rental rate for noncompetitive oil and gas lease. W-70640.

Affirmed.

1.      Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases:  
         Rentals

BLM may properly require the holder of a noncompetitive oil and gas lease to pay an increased rental of \$2 per acre for the entire leasehold pursuant to 43 CFR 3103.2-2(d), where BLM determines during the lease term that any part of the lands included in the lease is within a known geologic structure.

APPEARANCES: James D. Creighton, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

James D. Creighton has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated August 14, 1984, increasing the annual rental rate on appellant's noncompetitive oil and gas lease, W-70640, from \$1 to \$2 per acre.

Effective September 1, 1980, BLM issued a noncompetitive oil and gas lease to appellant for 2,197.33 acres of land situated in Campbell and Johnson Counties, Wyoming, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1982). <sup>1/</sup> By memorandum dated June 8, 1984, the District Manager, Casper District, Wyoming, notified the State Director, Wyoming, that some of the lands included in appellant's lease, described as lot 4 and the NE 1/4 SE 1/4 sec. 18, T. 43 N., R. 76 W., sixth principal meridian, Johnson County, Wyoming, are situated within an undefined addition to the Jepsen Draw undefined known geologic structure (KGS), effective May 4, 1984. In its August 1984 decision, BLM notified appellant of the KGS determination and stated that "[b]eginning with the lease year which starts at

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<sup>1/</sup> Effective July 1, 1982, BLM approved an assignment of the oil and gas lease to Mobil Oil Corporation (Mobil Oil). By memorandum dated Nov. 1, 1984, during the pendency of this appeal, we returned the case file to BLM, pursuant to appellant's request, so that BLM could process another assignment. Effective Oct. 1, 1984, BLM approved an assignment of the oil and gas lease from Mobil Oil to appellant and Gale N. Creighton.

least 30 days from your receipt of this notice, and for each year thereafter, the annual rental shall be increased to the rate of \$2.00 per acre, or fraction thereof."

In his statement of reasons for appeal, appellant contends that BLM is not entitled to increase the rental rate for a noncompetitive oil and gas lease where only a portion of the land is determined to be included in a KGS, or, that, in the alternative, BLM should only increase the rental rate as to the affected acreage. Appellant does not dispute the KGS determination.

[1] It is well established that when BLM has determined that any part of the lands described in a noncompetitive oil and gas lease is within an addition to a KGS, the lessee is properly required by BLM to pay an increased annual rental of \$2 per acre for the entire leasehold pursuant to 43 CFR 3103.2-2(d). 2/ Eagle Exploration Co., 83 IBLA 354 (1984); Ambra Oil & Gas Co., 58 IBLA 67 (1981), and cases cited therein.

Accordingly, we conclude that BLM properly increased the annual rental rate for appellant's noncompetitive oil and gas lease.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.  
Administrative Judge

We concur:

R. W. Mullen     Wm. Philip Horton  
Administrative Judge

Chief Administrative Judge.

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2/ The predecessor of 43 CFR 3103.2-2(d) was 43 CFR 3103.3-2(b)(1) (1982), which provided that, with respect to noncompetitive leases, the annual rental rate would be \$2 per acre or fraction thereof "beginning with the first lease year after the expiration of thirty days' notice to the lessee that all or part of the land is included in [a KGS]." Under the former regulation, a lessee was properly required to pay the increased rental where all or part of the land was included in a KGS. Robert D. Snyder, 13 IBLA 327 (1973). 43 CFR 3103.2-2(d) is not so explicitly phrased to require that the rental rate be increased as to the entire leasehold. It states simply that rental shall be payable at the rate of \$2 per acre or fraction thereof "[o]n lands within a lease \* \* \* which is later determined to be within a [KGS]." The regulation was promulgated without any comment in the preamble to the final rulemaking that it portended a change in policy and has been consistently interpreted by the Board to require an increase in the rental rate as to the entire leasehold. See 48 FR 33648, 33652 (July 22, 1983). Moreover, we conclude that this interpretation is not inconsistent with the wording of the regulation, which requires an increase in rental where there is a determination that the "lease," whether all or part, is within a KGS.

